

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
JUNE 2, 2015**

**CALL TO  
ORDER  
5:59 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Earl Bennett Building, Conference Rooms A and B, 1035 1<sup>st</sup> Ave W, Kalispell, Montana. Board members present were Gina Klempel, Mark Hash, Cal Dyck and Roger Noble. Ole Netteberg had an excused absence. Erik Mack represented the Flathead County Planning & Zoning Office.

There were 6 people in the audience.

**APPROVAL OF  
MINUTES  
5:59 pm**

Noble motioned and Dyck seconded to approve the April 7, 2015 minutes. The motion passed unanimously.

**PUBLIC  
COMMENT  
(Public matters  
that are within  
the jurisdiction  
of the Board  
2-3-103 M.C.A)  
6:00 pm**

None.

**STEVE AND  
JUDY PARKER  
(FZV-15-01)  
6:01 pm**

A request by Steve & Judy Parker for a Zoning Variance to property within the Caroline Point Zoning District and zoned R-2 One Family Limited Residential. The applicant is requesting a variance to Section 3.10.040(3)(A), "Bulk and Dimensional Requirements", (Side Setback), of the Flathead County Zoning Regulations. The property is located at 365 Caroline Point in Lakeside, MT.

**STAFF REPORT**

Mack reviewed Staff Report FZV-15-01 for the Board.

**BOARD  
QUESTIONS**

Noble and Mack discussed where the easement for Lakeside Water and Sewer was located.

**APPLICANT  
PRESENTATION**

Mike Fraser, 690 North Meridian Road, Suite 103, represented the applicant. He said it was important to grasp the history and background of the property. He explained the history of the property, when the property was subdivided, the size of the first lots, and what was probably intended to be placed on the lots.

He reviewed how the property was zoned in the 1980's and non-conforming lots in the area. He talked about the boundary line adjustment on the property in 1989 and its effects on the property. He described the slope of the lot, the improvements the current property owners had done on the property since its purchase in 2014 and the reasons they had missed the 180 day window to replace a non-conforming structure demolished in the end of September 2014. He also talked about the request for the variance for two spots of the proposed house of four and one half feet and two feet, ten inches. The structure was limited on one side by the Lakeside Water and Sewer easement. The side yard easement had been reduced from 20 feet to 15 feet. If the easement was not there, they would be in compliance. Efforts had been made by the applicants to make the house conform to the lot. Thirty one point five square feet was the total encroachment versus 200 square feet previously with the replacement of the non-conforming structure. The building envelope was about 3,700 square feet. The house itself was 3,360 square feet. With the square feet of the Lakeside easement removed from the building envelope, the applicants were left with 3,480 square feet. He talked about the size of the building envelope and what they wished to build in the envelope. Because of the site, there was no parking on the site except behind the garage. The character of the lakeshore was changing as the older cabins were sold and replaced. He said they had fit a modest home on the site with a small amount of encroachment. The option of moving the house nine feet would eliminate the deck off the main floor. A reasonable residence would have the opportunity of having a deck off the main living area. They did not see that option as solving anything. This was a reasonable use of the property. Denying the variance would deny them reasonable use of their property. Strict compliance would deny them reasonable use as well. Moving the house forward would involve a large amount of fill to maintain access in through the driveway. It was not a very practical option. Topography dictated the house location. There were other properties of similar size or larger. They had the same opportunity to build reasonable houses. The applicants were constrained by the topography and lot configuration. He reviewed findings of fact, talked about reasonable use of the property, the distance of the previous house with the non-conforming use and the currently proposed distance. He discussed rights enjoyed by others, the hardship was brought on by topography and shape of the lot. They had reduced the encroachment from 233 square feet of encroachment to 31

square feet. The variance did not confer them special privilege.

**BOARD  
QUESTIONS**

None.

**PUBLIC  
COMMENT**

Steve Parker, 28872 Hedgerow, Mission View, CA, was the applicant. He explained in detail how they had found the property, decided to purchase it, the history of what had been done on the property so far, visits to the Planning Office and why they were before the board now. They did not realize there was a 180 day time limit for a con-conforming use. They had met with the neighbor (Fred McKnight) who had filed a complaint they were out of compliance, showed him the steaks in the ground for the house footprint and reoriented the house to work with him. The site plans were not shown to McKnight because they were informed they would need to apply for a variance. The house had been moved three to four feet from the previous stakes in the ground when McKnight had looked at it. He explained the difficulties in cutting off the encroaching corners and said to move the house further towards the water raised the bottom floor five and a half feet above the seawall. Then there was a super steep grass area or steps coming out of the patio which was what they didn't want to do. He wanted to mention in the photographs before the board, there were tractors. He had made a deal with their neighbor to rebuild the neighbor's parking garage which was falling apart and the retaining wall on the land above the access to his property to open up the access to allow access out of the proposed garage to be able to back up and turn around. If McKnight lived in that house, he would have asked him to do the same thing. They wanted to be good neighbors. This little bit of encroachment was on the side and was not a hindrance to anyone from a view standpoint and they would like to be granted permission to start construction immediately if possible.

Judy Parker, 28872, Hedgerow, Mission View, CA, was the applicant and a former real estate appraiser. As property values increased there were more people wanting to come in and build because of the high cost of the lot. She wanted to add no one was building 1,000 foot houses in the area. She compared the size of her house with a neighbor two doors down. She did not think what they were asking to do in current times was unreasonable. She had checked what the square footage was of neighboring houses. There were non-conforming lots with R-2 zoning. She talked about the boundary line adjustment and the

narrowing of the property which affected the ingress and egress of the property. She explained how they had traded rebuilding a garage for improved access to the property. The zoning office came back and said they could move the house forward, would not need a variance and they could chop off the deck. She recited Webster's definition of a variance. The rule was a 20 foot setback from the lake. She liked the 20 foot setback and thought it was a good rule. By moving the house forward they were creating a variance, by the very definition. They were creating a different variance and quite frankly they were creating a bigger variance than what they had asked for. What they had asked for was the less egregious of the two options. She rested her case on that point but to not call it a variance was not fair. It was a variance just a different variance. If a person got on the internet and looked up when McKnight's variance was granted in August 2013, it was called a variance. She thanked the board for their time.

**STAFF  
REBUTTAL**

Mack said he was unclear about Ms. Parker's point regarding the variance and the lakeshore. If they removed the upper deck no variance would be required for the lakeshore.

Mr. Parker said it was a two story house; the deck was off the top floor and proceeded to describe the layout of the house. They wanted their main living area on one level. There would be two extra bedrooms on the bottom level. They wanted to have full access to a patio on their main level which was no different than any other house in the area. He explained how they wished to use the patio.

Mrs. Parker said she had done some research and had found almost every property in the area had a deck of some sort. The decks ran anywhere from eleven to forty nine percent of living area. Their deck came in at the lower end of that range, maybe fifteen percent. This was a deck that was off of the main floor. They had a walk out basement so they could not use pavers. In fact, on the lake level, there would only be a very small patio so as a person came out the door, they would not come out onto grass.

Hash asked Mack if he had any other comments.

Mack said he had none.

**APPLICANT  
REBUTTAL**

None.

**BOARD  
DISCUSSION**

Hash said the board had difficulty with the case because they tried hard to make variances work. In this case, with a variance, the board had to find in favor of all the findings to support the variance. The Planning Office had submitted as draft findings of fact five or six findings which were against the application. The board would need to work on each of those findings. If they couldn't find in favor of all the findings, then they had to deny the variance. That was the struggle the board had at this meeting.

Klempel said on finding #6, Ms. Parker had made her point. It was a two story house with a daylight basement and they could not put a deck on the bottom floor. They had to have a deck on the top floor because they did not want to do the stairs. She understood that. She said the board did have to meet the criteria of the variance. Some of the findings supported a variance some of them did not. She thought finding #6 was unreasonable. The applicants had a utility easement on the side of the property. So basically, that part of the property goes for public use and everyone uses it for utilities.

Klempel and the applicants discussed by how many days they had missed the 180 day timeline which was 14 days.

Fraser said the applicants were upfront. They could have put down some two by sixes and a couple pieces of steel and said they had started construction.

Klempel and Fraser discussed if there had been any feedback from the fire department.

Mr. Parker said they had moved the house an additional three, three and a half feet when McKnight had said the house was too close. They knew McKnight wanted to make the opening as wide and safe as possible.

Klempel and the applicants discussed the original footprint of the house when it would have been built in the non-conforming spot.

Hash asked if Mack would address the three public comments from neighbors who were against the application.

Mack said one comment concerned the fire department and the closest fire hydrant being a thousand feet away at the Cherry Hill Yacht Club and the other two were similar in commenting on open space.

Hash said there was a comment which said the proposed new structure was much larger than the previous house.

The board and Mack discussed the previous footprint and if there were other houses in the area which were the same size.

Ms. Parker wished to add a comment.

Hash said they had closed the part of the meeting where she could add information. If a board member recognized her, then she could comment.

Dyck said there were a couple of issues which needed to be addressed. One was if the deck was a part of the house and would change the structure if it was removed. He also said they had the restriction of the sewer easement on the east side of the property which was unique to this lot. If they had to stay within the ten foot setback, then the house would be conforming. It was something they had to seriously look at.

Hash and Mack discussed the comment from Lakeside Sewer and Water which addressed the easement and if a boundary line adjustment with their neighbor was a possibility.

Fraser said on the west boundary they would need two little triangles which came to a total of 33 square feet. One area would be 2.8 feet by a short distance and the other one would be four feet, six inches.

Hash asked if that was something the neighbors were willing to do.

Fraser could not answer that question.

Hash asked Mr. Parker if that was something he had talked with McKnight about.

Mr. Parker said it was something in their worst case scenario and they did adjust the position of the house because they had had a conversation with McKnight who said 'let's see how far you

can move the house.’ They told him they would go back to their architect and see what could be done. They had shrunk the house, reconfigured the bathroom and the garage and redid the rooflines to get the house as small as possible and keep the integrity of the master plans they had already developed.

Noble and Fraser discussed the reason for the original boundary line adjustment.

Hash asked McKnight what his concern was on this application.

McKnight said the neighbors had been concerned about the original house for over five years. The original house was extended over his property line by eight or nine feet. The house was always in trouble financially, the neighborhood was always worried there would be a fire of some kind on the property.

Hash asked McKnight if where the house was set if it would be an encroachment on the purpose of a setback.

McKnight said he had no idea. The first thing he saw was the stakes going into the ground that was at the corner of the house.

Hash asked if he knew where the house corner was going at this time.

McKnight said not today. No.

Hash asked McKnight to look at the visual aid map to see how far it would be from his boundary line.

McKnight said he knew where the property line was, but not the house.

Hash asked if it was McKnight’s position that he wanted the home to stay within the setback.

McKnight said that was what he had to live with when he did his extension on his house.

Hash asked Chuck Manning if he wanted to make any comments since he was in the audience or if he wanted to stand by his public comment letter.

Manning said he did have a few comments. He was involved in

the original zoning in the '80's. He was a real proponent of the zoning and had helped to bring it onto the area. There were roughly 80 to 90% of the land owners who signed the petition to zone the area. The commissioners would not look at zoning an area at that time unless there were 90% of the owners in the area in favor of it. The zoning was done to attempt to protect the integrity of that little area on the point. He went on to explain why it was unique. Most of the residences on that point were roughly the 1,000 to 1,500 square feet. Even the large house which had been discussed looked like a huge house but was actually less than 2,000 square feet. There was an impression that there were larger houses in the area which he really didn't think was that large. They did have to live with the times and that was why zoning was put into place. It was put into place to protect the open space, to have the setbacks as stated in the zoning ordinance and to try to keep the integrity. He did realize the Parkers were in a bind because of the two little encroachments into the setback requirements. If they would have met the timeline, they would not have a problem. He would basically call back to the zoning and that variances were put in place to protect the residents and the property at that point in time. Things did change. He just fell back to the law. That was why zoning was put into place. That was why the variance board was put into place which was for conditions like this. The board was in a tough spot. He sympathized with the Parkers. He went back to the original intent of the zoning and that was to try to keep the integrity of the area which was in place back in the '80's. He did agree that times changed.

Hash said it was difficult for the board because they did want people to be able to do what they wanted to do with their property but they did not want it to affect the neighborhood if possible. The difficulty was when something happened which was out of control of the applicant or they bought a piece of property and something was laid over it. In this case, the applicants knew the shape of the property when they purchased it which made it harder for the board in his own mind. He asked the two neighbors, who were present, if the house, if built, would change the character of the neighborhood.

Manning said he really didn't have a comment on that question. The applicant met all the requirements that was why he looked at the recommendation and that was if they could make the shift towards the lake and do some modifications, they would not need to have a variance. According to the applicant, what they



would like to have was the porch and the area out in front of their place. People could not always get what they liked. He hated to say that. Sometimes changes and modifications had to be made. If it was too late in the process for them to make modifications, that was up to them to decide. He thought the recommendation was a realistic approach to still comply without having to go through the variance process.

Hash asked McKnight if he had any comment or if he didn't have any idea of how the house would fit on the lot at all.

McKnight said he hadn't any idea.

Hash asked Frasier if he had a comment.

Frasier said the house met the coverage requirement even after the east side easement was taken out. He appreciated Dyck's perspective that the situation was unique. The new house was bigger than the old house. If they took out 33 square feet they could build there and not be here at the meeting but there would be some problems internally with the house as to how it would function for the Parkers. They were talking about something which was five by six and a half feet as having an effect on the neighborhood. The main floor was 29 x 11, took a ten foot rise to the top of the rafters and then another 12 feet for the roof line. The top of their peaks were 2,933 which was a rough estimate. The bank coming in was 2,925, so the house was maybe six or seven feet above the bank. Then there was tree cover. The garage to the west would shield it. So the people on Caroline Point were not going to see a lot. They were talking about something which was very small. It would not create a visual obstruction of the view. It would be six or seven feet above the hill.

Hash recognized Mr. Parker.

Mr. Parker said in comment to the views, there were some large trees on McKnight's property which were removed so that did make it more open and safer from a fire. They planned on hiring a professional landscape architect to landscape the house nicely. They were not just throwing something up. They were spending a lot of money on this. It was their retirement home and they wanted to enjoy the full capability of the yard out front, the deck out front, the dock and their grandchildren visiting to enjoy it. These two little corners were just like little corners. If they had

done it before, and didn't miss the timeline by twenty days, the house would have been a lot larger. They had redrawn their drawings to minimize the encroachment.

Hash asked Mack if he had any further comments.

Mack had no further comments.

Noble said one of the issues was the deck. He asked the dimensions of the deck.

Mr. Parker said it was eight feet wide on both sides and the center was twelve feet wide which was the covered area. He explained the dimensions on the visual aid. The deck was not the full width of the house. The sides were set back ten or eleven feet from the edges of the house.

Hash and Mack discussed shifting the house and if Mack's position had changed during the discussion.

Mr. Parker asked to make another comment.

Hash declined the comment at this time.

Klempel said the sad thing of the variance was they could have cheated on saying when they started building. She respected and commended them for not doing that. She hated to see someone punished over 14 days. She thought they had tried their very best.

Dyck said the hard part was trying to meet all of the criteria because of the different responsibilities they had to deal with. Granted, the largest impact to the setback was the size of a small table in the room before them. That was the difficult part of the application.

Noble said he saw six negative findings of fact and three positive. They would have to rewrite the six negative findings to grant the variance.

Mack and Noble discussed the number of findings.

Noble said finding #7 concerning the application's effect on the neighbors was a big change. When packets went out, there were no neighbors concerned and since that time they had received

three comments of concern from neighbors. That was one finding he was struggling with. He asked if they shortened the deck a little, what it would take to move the house forward.

Mr. Parker said for every two feet the house was brought closer to the water, the encroachment was reduced by a foot. They could move the house two feet and reduce the square footage of the encroachment from 33 down to probably 15 or 16 square feet.

Dyck and Mr. Parker discussed the sewer easement, topography of the property and possible position of the house by moving forward and to the east.

Klempel said on finding #9, she did not see where they would be conveying special privilege since there were other properties in the area which were consistent with this proposed house.

Noble and Mr. Parker discussed if anything was built yet.

Mr. Parker said the footprint of the house was currently staked exactly where the house would be positioned if the variance was requested. Those stakes were in place and McKnight was on the property earlier in the day. Parker was sure he saw the stakes. They were the current stakes not the previous location stakes. They did have it resurveyed three times to reposition the stakes correctly.

Noble clarified if they took two feet off of the deck, moved the house two feet forward, then instead of having 33 feet in the encroachment, they would have the encroachment down to 15 feet.

Mr. Parker said the farther the house was moved forward, the steeper the slope was. He reviewed what would need to be done to the house to accommodate a shift forward.

Hash said part of the problem was they were encroaching on a neighbor who was present at the meeting who was uncomfortable with the application. That was what he was having problems with.

Mr. Parker said he did have a conversation with McKnight where McKnight said the stakes to the house were too close to his property. He visited the Planning Office for advice and redrew

the plans to the house as much as possible. He had tried to work with McKnight. He said BJ Grieve had advised him to file for a variance.

The board and the Parker's discussed what Grieve may have advised.

Mrs. Parker said they had went into the Planning Office last spring and summer with their plans, stood at the front desk, went over the details, told the office they planned to tear down the old house, and were told they could stay within the old footprint.

Hash and Mack discussed the effect of the reduction of the porch and if it was done, if it would be a reasonable use of the property.

Mr. Parker said it caused a hardship...

Hash said the board needed to address Mr. Parker at this stage of the meeting if he had something to say.

Hash and Noble discussed moving the house forward and the options of the board concerning the application.

Dyck said finding of fact #7 was important. It was unfortunate it was a 14 day miss of the 180 day window to start construction, but then that was part of the struggle.

Klempel said what was sticking with her was the letter concerning fire services. If the old cabin had caught fire, the neighbors would be in the same position then as they would be with a new home there which was closer. She struggled with that. She did not mean any disrespect to any neighbor or anyone in attendance. Her thoughts were would she rather have a ratty old cabin next to her? Even though it was historical, after a while historical uses were either maintained or not maintained. If they were not maintained, they practically drug down the neighborhood. She was all for historical value, but there came a point when it was no longer maintained that it became a problem. That was what she saw with the fire issue.

Hash said there was a direct neighbor in attendance that was uncomfortable with the variance. He asked Klempel what her thoughts were on that issue.

Klempel said it was basically between the applicant and the neighbor.

Hash and Klempel discussed the effects on the neighborhood concerning either a fire or new house.

The board discussed how to proceed. They debated at length the findings of fact one by one and alternate wording.

Noble asked Mr. Parker what happened with the house if the footprint was moved.

Mr. Parker explained the yard would be steeper to the water and it would eliminate the deck which was off the master bedroom. He did not think that was appropriate. They were talking a couple of little, small areas of encroachment. The area behind the house was giving them the enjoyment of their property. This was where the views were. It was on the backside of the house. No one was seeing it. It was not obstructing anyone's site lines. More fill; more everything would be needed by the time they moved the house towards the lake. He was a licensed architect who had designed restaurants, hotels and commercial projects. If there was a building permit which was getting ready to expire, you could file for an extension. They had a dock which they had a permit for which they could not finish; the water level was too high. They would have to go back and get an extension so they could do it next year. With the fourteen days, they should have been able to file for an extension for that timeframe in the same way. They did not cause the delay. The water level went up on the lake. They did not ask for the water level to rise. They did not ask for any of this stuff. He thought they were working as good neighbors to come up with the easiest solution with the least impact without destroying the intent of what they tried doing already. It would have been worse if they had made the timeline. They had already compromised by moving the house down as far as they possibly could.

Klempel asked Mack if the Planning Office issued warnings of the 180 days were about to expire. Did they ever give extensions or notify the people of the timeline?

Mack said the county did not have a building department so there was no way to know when people were doing construction or tearing down structures. The issue had never been raised

before or had been something the office had dealt with before.

Hash, Mack and Fraser discussed the buildable area of the lot with the setbacks and easements.

Hash said he felt the applicants had been caught up in circumstances with the 180 day time limit. He also felt people had to know the laws which regulated things. It was the applicant's responsibility to know what applied to them. He still sympathized with them also because they could have started to build the home within 180 days. He wanted to lean towards making the variance work for them. On the other hand, the way the board had worked in the past with variances, this did not fit. It was unique and different. The reason the board was trying to make it work to for the applicants was because they had already done their architectural plan which had involved an investment of money. They truly had a buildable area which was significant. They had the ability, in his opinion, to build a place with reasonable use of the property. On the other hand, they had an expense in the plans and the amount of encroachment was negligible, in his opinion. But what bothered him on the other side was they had a neighbor in attendance and the board paid attention to the neighbors and the neighborhood. The neighbor said he felt uncomfortable with the encroachment. He may not have all the knowledge he needed to know what the encroachment was but he felt uncomfortable with it. If he was truly to look at the requirements the board had to find, ignoring the inequities of the situation, he would probably find that they could not grant the variance. The Planning Office works hard to put the facts together and he had not seen anything which changed those facts. But they had worked pretty well as a unit as a board. He thought the board was thinking along the same lines he was. If they wanted to make the application work, they had to meet the determination the applicants could not make the shift of the house. The other option was, if the variance was not approved or the applicants did not like the conditions of the variance, was to work with the neighbor to do a slight boundary adjustment. They were not considering that aspect, they were looking at the criteria for granting a variance.

Noble said there were six findings which they would have to rewrite to approve. He said he could get to where he was willing to rewrite the findings with the exception of #7. If they could adjust the deck and things a little bit so there would be some consideration of the neighbors...

Hash asked Noble if he could make changes to findings he felt comfortable with.

Noble thought they would have to work through them.

Hash asked for clarification.

Noble said what Mr. Parker had said was if the house was moved ahead two feet...

Mr. Parker said for every two feet they slid down, they picked up one more foot in width, left or right from McKnight's house.

Noble said then the encroachment went from 33 to 15 feet. To him that would be a consideration to the neighbor to alleviate the concern.

The board and Mr. Parker discussed how much of a shift was possible which was two feet, what would change with the shift and the change from the original plan to accommodate McKnight's concern.

Hash and Fraser discussed what the variance would be with a two foot shift towards the lake which was approximately 13 square feet.

Hash asked McKnight if the reduction of the encroachment into the setback was done, none of this was on his property at all, was it something that he could live with.

McKnight said he could live with a lot of things if he could just see them, but he had never been privileged with any information. That was why he was at the meeting.

Hash clarified the compromise Noble would want to do to affect all the findings would be a shift of two feet so he could work with the findings to grant a variance.

Noble said he was willing to take a stab at it.

Klempel said she thought the shift would solve the problems with finding of fact #7.

Dyck said there would basically be only one place in which the

house would be in violation.

Dyck, Fraser and Mr. Parker discussed if the house would be in need of a variance on one area instead of two if the house shifted two feet.

Dyck asked the applicants what the outside covering of the house would be.

Mr. Parker said it would be hardy board siding.

Dyck confirmed it was a non-flammable siding.

Fraser and Mr. Parker reviewed the distance of the house from McKnight's.

Hash said Manning could see the difficulty of trying to enforce the spirit of what they had tried to accomplish with zoning so many years ago. He asked Manning if he had any thoughts on what the board was trying to do.

Manning said he was in favor of compromise. If McKnight was willing to acknowledge the adjustment... again, he went back to what he had said previously. Zoning was put in place. A variance was a tool which was why the Parker's were before the board. The board was in a tough situation.

Hash asked Fraser to move the visual aid so McKnight could see the footprint of the proposed house depicted on the property. He described the encroachments into the setback on the board. One of the encroachments would be eliminated. The other one would be reduced.

McKnight said he wanted to see a plat map.

Mr. Parker said the visual aid was a plat map. He asked if McKnight wanted to see stakes in the ground. The visual aid was an engineered, certified, site plan. He had stakes in the ground right now and had photos of the stakes at the meeting.

Dyck said he believed the shift of two feet was a viable compromise. This piece of property had a unique situation because of the sewer easement which was required on the side of the property. If they didn't have the easement, they would not need a variance. They were concerned with fire, which they were



using hardy plank which was non-flammable. They were also concerned with the space between the houses which was 19 feet which still gave access. He believed they met what was needed as long as the neighborhood was at peace with the variance.

Hash and Mr. Parker discussed if he would accept moving the house two feet forward if required.

Hash and Mack discussed which conditions the office would want on the variance to move the house two feet.

Klempel asked who paid the taxes on the water and sewer easement.

Mr. Parker said they did.

Noble and Mr. Parker discussed the reduction of the setback of the easement.

The board and Mack discussed what the process would need to be to grant the variance with the shift of the house two feet.

**MAIN MOTION  
TO ADOPT  
F.O.F.  
(FZV-15-01)**

Noble made a motion seconded by Dyck to adopt staff report FZV-15-01 as findings-of-fact as amended.

**BOARD  
DISCUSSION**

The board and Mack discussed process and wording for secondary motions.

**SECONDARY  
MOTION  
amend F.O.F. #1**

Noble made a motion seconded by Klempel to amend finding of fact #1 to read:

1. Strict compliance with the regulations ~~would not~~ limits the reasonable use of the property *if there is a two foot shift* because the square footage of the proposed house and other structures is 3,360 square feet, the lot has a buildable area of 3,700 square feet and *the Lakeside easement and corresponding lakeshore protection setback limit the buildable area the proposed house could be shifted 9 feet to the north and be built to the same size as currently proposed with a portion of the proposed covered patio remaining uncovered.*

**BOARD**

None.

## **DISCUSSION**

### **ROLL CALL VOTE TO Amend F.O.F. #1**

On a roll call vote the motion passed unanimously.

### **BOARD DISCUSSION**

The board discussed alternate wording for finding of fact #2.

### **SECONDARY MOTION amend F.O.F. #2**

Dyck made a motion seconded by Noble to amend finding of fact #2 to read:

2. Strict compliance with the regulations would likely not deprive the applicant of rights enjoyed by other properties similarly situated in the same district because the proposed house could still be built in compliance with the regulations and the applicant is proposing to construct a house 2,000 square feet larger than many of the other structures in the same subdivision.

### **BOARD DISCUSSION**

None.

### **ROLL CALL VOTE TO Amend F.O.F. #2**

On a roll call vote the motion passed unanimously.

### **BOARD DISCUSSION**

The board continued to review the findings of fact. They discussed alternate wording for finding of fact #6.

### **SECONDARY MOTION amend F.O.F. #6**

Noble made a motion seconded by Dyck to amend finding of fact #6 to read:

6. A reasonable or viable alternative appears to exist by moving the house 2 feet north because of the topographic constraints the house has not been constructed, could be built 9 feet further north than is proposed which would eliminate a portion of the covered porch and it would still allow for an unhindered 15 foot easement.

### **BOARD DISCUSSION**

None.

### **ROLL CALL VOTE TO**

On a roll call vote the motion passed unanimously.

***Amend F.O.F. #6***

**BOARD  
DISCUSSION**

The board discussed finding of fact #7.

**SECONDARY  
MOTION  
*amend F.O.F. #7***

Noble made a motion seconded by Klempel to amend finding of fact #7 to read:

7. Granting of the variance request ~~does not~~ would not appear to have a significant impact on neighboring properties or the public because ~~of the concessions made by the applicant even though staff has received phone calls from concerned neighbors no written comments or complaints have been submitted.~~

**BOARD  
DISCUSSION**

None.

**ROLL CALL  
VOTE TO  
*Amend F.O.F. #7***

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

The board discussed alternate wording for finding of fact #8.

**SECONDARY  
MOTION  
*amend F.O.F. #8***

Noble made a motion seconded by Klempel to amend finding of fact #8 to read:

8. *With the two foot shift* the variance requested does not appear to be the minimum variance which would alleviate the alleged hardship ~~because the house could be constructed 9 feet further north which would reduce the covered area of the patio not impact the gravel path for the ATV or the sewer line easement and no variance would be required.~~

**BOARD  
DISCUSSION**

None.

**ROLL CALL  
VOTE TO  
*Amend F.O.F. #8***

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

The board discussed alternate wording for finding of fact #9.

**SECONDARY**

Noble made a motion seconded by Klempel to amend finding of

**MOTION**  
***amend F.O.F. #9***

fact #9 to read:

9. Granting of the variance ~~does not would likely~~ confer a special privilege that is denied to other properties in the district because the house being *shifted two feet to the north* ~~proposed covers 2,000 square feet more of the lot than other structures on neighboring lots~~ and the variance granted to the neighboring lot was for an addition to a non-conforming structure ~~while this variance request is for a newly constructed structure.~~

**BOARD**  
**DISCUSSION**

None.

**ROLL CALL**  
**VOTE TO**  
***Amend F.O.F. #9***

On a roll call vote the motion passed unanimously.

**BOARD**  
**DISCUSSION**

The board reviewed the main motion to adopt finding of facts as amended.

**ROLL CALL TO**  
**ADOPT F.O.F.**  
***(FZV-15-01)***

On a roll call vote the motion passed unanimously.

**BOARD**  
**DISCUSSION**

Hash reviewed process.

Mack and the board discussed adding a condition to the variance concerning a two foot shift.

Mack, the board and applicants discussed at length wording for a condition concerning the two foot shift.

**MAIN MOTION**  
**TO APPROVE**  
**WITH ONE**  
**CONDITION**  
***(FZV-15-01)***

Klempel made a motion seconded by Noble to approve with one condition which read:

1. The building shall be shifted two feet to the north while maintaining the footprint of the site plan that was submitted based on the applicants acceptance of the two foot shift.

**BOARD**  
**DISCUSSION**

Hash clarified the condition was discussed with the applicants and placed on the variance with the applicants' consent.

**ROLL CALL TO**  
**APPROVE WITH**  
**ONE**

On a roll call vote the motion passed unanimously.

**CONDITION**  
**(FZV-15-01)**

**OLD BUSINESS**     None.

**NEW BUSINESS**     None.

**ADJOURNMENT**     The meeting was adjourned at approximately 8:11 pm. on a motion by Klempel. The next meeting will be held at 6:00 p.m. on July 7, 2015.

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C. Mark Hash, Chairman

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Donna Valade, Recording Secretary

*APPROVED AS **SUBMITTED**/CORRECTED: 7 / 8 / 15*